

GRAM: CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB (SM)

Appeal No. E/1122/99-NB (SM)

Dated: 14/3/2001

CEGAT
NEW DELHI
To,

M/s Rewa Fan Industries

Co M/s Ravi Alloys Ltd.

195, Big Ind. Estate,

Chandpur, Varanasi

In the matter of:

M/s Rewa Fan Indus.

Appellant

vs.

CCE Bhopal

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/345/01-NB (SM)
Dated: 7-3-2001 passed by the Tribunal under Section 35-C(1) of Central Excise & Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to:

1. CCE Bhopal
2. CCE / CE / (Appeal) Bhopal
3. Chief Commissioner of Central Excise / Customs. Jai pur
4. Adv. / Consult. Shri M. P. Devnath, Adv.,
B-4/158, Sardarjung Enclave,
Basement, New Delhi - 29,
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. ~~M/s Lex Site Com. Ltd., Mumbai~~
14. Office Copy
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Asstt. Registrar
NB (SM)

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Asstt. Registrar

CUSTOMS EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL,
NEW DELHI

E/Appeal No. 1122/99-NB(S)

(Arising out of Order-in-Appeal No. 181-CE/Appl/99 dated
9.2.99 passed by the Commissioner (Appeals), Bhopal)

M/s. Rewa Fan Industries Appellants,
Reptd. by Sh. M.P. Dev Nath, Advocate

Versus

CCE, Bhopal Respondent,
Reptd. by Sh. K. Panchatcharan, JDR

FINAL ORDER NO. A/345/01/NB (S/M)
DATED 16.1.2001

Per V.K. Agrawal:

In this appeal, filed by M/s. Rewa Fan Industries, the issue the issue involved is whether the Modvat Credit is available to them on the strength of Gate Passes neither issued in their name nor endorsed in their favour.

2. Shri M.P. Devnath, learned Advocate, submitted that the Appellants get their job work done through their job-workers stationed at Varanasi; that the inputs are sent directly to the job-workers by the manufacturer of the inputs as per advice; that their Head Office is also situated at Varanasi, and there is no unit named 'Rewa Fan Industries at Varanasi; that they directed M/s. Hindalco Industries Ltd., Renukot, to send the inputs directly to their job-workers at Varanasi. Accordingly M/s. Hindalco Industries despatched two consignments of inputs to job workers by mentioning the name on Gate-Passes as "M/s. Rewa Fan Industries, Varanasi"; that

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similarly M/s. Shalimar Paints had sent the inputs to their Head Office at Varanasi which was sent back to the factory at Rewa; that while despatching the processed inputs, the Job-workers inadvertently and without any malafide corrected the station mentioned on the gate pass from 'Varanasi' to 'Rewa'. He, further, submitted that a notice dated 30.9.93 was issued to them for disallowing the Modvat Credit taken by them in May, 1991 and February, 1992 against the Gate Passes issued by M/s. Hindalco Industries without invoking the extended period; that another notice dated 7.10.93 was issued for disallowing the Modvat Credit taken on 28.5.93. He also mentioned that the demand under first show cause notice dated 30.9.93 is hit by time limit as it was raised much beyond the period of six months; that neither the larger period of limitation was invoked in the show cause notice nor it is invocable as original duty paying documents had been defaced by the Range Suptd. and RT-12 Returns alongwith RG23A, Part II were submitted on due dates alongwith duty paying documents. He finally submitted that wrong mention~~ed~~ of address of a unit will not debar them from availing of MODVAT Credit. Reliance was placed on the decision in the case of C.D. Engg. Co. vs. CCE, Meerut, 1999 (105) ELT 194 (T).

3. Opposing the appeal, Shri K. Panchatcharam, learned D.R., reiterated the findings as contained in both the Orders ~~passed~~^{passed} by both the lower authorities and emphasised the fact that the word "Varanasi" was scored out and "Rewa" was written on the Gate Passes by them.

4. I have considered the submissions of both the sides. It has been mentioned by the Assistant Collector,

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in his findings in Adjudication Order No. 4/95 dated 27.3.1993 that "there is a general agreement as regards the non-existence of any unit named "M/s. Rewa Fan Industries at Varanasi (a fact borne out by the letter C. No.V(30)MISC/1/92/Pt/2168 of the Assistant Collector, Central Excise, Varanasi)." Once it is not in dispute that there is no unit at Varanasi and the inputs had been received by the Appellant, Modvat Credit cannot be disallowed merely on the ground that in the duty paying documents, "Varanasi" instead of "Rewa" was mentioned. It was held in C.D. Engg. Co., supra, that "the Modvat Credit cannot be denied merely because the address of the assessee unit was wrongly mentioned by the supplier which is a rectifiable defect. Further the learned Advocate has satisfactorily explained the reasons as to why address was given as Varanasi instead of Rewa. This was on account of inputs going directly to the Job-workers at Varanasi and the Appellants Head Office being located there. Further, the first show cause notice dated 30.3.93 is also hit by Time limit as it was issued beyond the period of six months of taking the Modvat Credit as there was no allegation of suppression, etc. invoked in the show cause notice nor any finding given to this effect in the Adjudication Order. In view of this I set aside the impugned Order and allow the appeal.

(V.K. AGRAWAL)
MEMBER (TECHNICAL)

Dated 7th March, 2001

RK